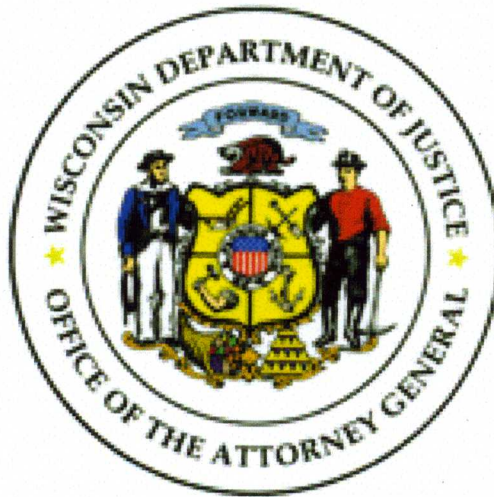


Internet Crimes Against Children

Priority Needs For Our Top Priority: Kids



WISCONSIN DEPARTMENT OF JUSTICE
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Attorney General

May 3, 2007

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I. Executive Summary

Children have embraced the Internet with remarkable enthusiasm, as they go online to learn, play, and communicate with their friends. The Internet influences how children discover and interact with the world around them. Unfortunately, like most technology that provides a net social good, the Internet carries with it perils as well. Some sex offenders use the privacy and anonymity of the Internet to prey on vulnerable children and teenagers, whose Internet access is often unsupervised. Other offenders use the Internet to exchange images capturing the sexual abuse of children. Historically, in exchanging child pornography or seeking victims online, sex offenders faced little risk of interdiction of their criminal activities. Yet their activity presents both a significant threat to the health and safety of young people and a formidable challenge for law enforcement.

In response to this problem, Congress, through the FY1998 Justice Appropriations Act, directed the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP) to create a national network of State and local law enforcement cyber units to investigate child sexual exploitation. Through this Congressional mandate, OJJDP created the Internet Crimes Against Children (ICAC) Task Force Program. The purpose of the ICAC Task Force program is to help State and local law enforcement agencies increase their collective capacities to respond to computer and Internet facilitated sexual exploitation of children. This response requires increased aptitude in conducting technical investigations, computer forensics, community outreach and education, and victim services.

Wisconsin was one of the first ten ICAC Task Force programs established in the nation. The Wisconsin ICAC Task Force is led by the Department of Justice, Division of Criminal Investigation, and currently includes local partners from twenty-four (24) law enforcement agencies around the State. The Wisconsin ICAC Task Force efforts include conducting proactive and reactive investigations, developing a forensic response, identifying and assisting victims of child predators and educating the community on ways to keep children safer online.

The Wisconsin ICAC Task Force has been recognized nationally for its investigative efforts; setting pace for the country in ICAC related arrests for the past two years. In 2005, the Wisconsin ICAC Task Force led the nation in the number of ICAC arrests. In 2006, that achievement was shared with a task force located in Florida. Even with Wisconsin's nationally recognized efforts, online sex offender activity continues to rise and additional children continue to be placed at risk. For example, today the Wisconsin Department of Justice is aware of over 15,445 unique Internet Protocol addresses in Wisconsin offering to share known child pornography. Additional investigative resources to combat this growing criminal class would lead to more optimal enforcement of the laws, taking sex offenders off the streets and thereby better protecting Wisconsin's children. To do this, the Department of Justice is requesting additional resources including six special agents, six computer forensic analysts, one program and planning analyst, and one special agent in charge.

II. The Scope of the Problem: Use of the Internet to Distribute Child Pornography and Prey on Youth

The Internet is widely accessed by youth today. When appropriately used, the Internet is a tremendous informational and educational resource. The misuse of the Internet by some adults to prey on and distribute sexually explicit images of children is a serious problem requiring action by law enforcement, legislators, families, and communities. Studies relating to online victimization of our youth reveal the following:

While online, approximately 1 in 7 kids are requested by an adult to engage in sexual activities or sexual talk or give personal sexual information. Close to one-third of these sexual solicitations (31%) were aggressive, meaning the solicitors made, or attempted, offline contact with youth. In aggressive solicitation incidents, seventy-five (75) percent of solicitors asked to meet youth in person; thirty-four (34) percent called youth on the telephone; eighteen (18) percent came to youth's home; twelve (12) percent gave youth money, gifts, or other items; nine (9) percent sent offline mail to youth; three (3) percent bought travel tickets for youth. Four percent of all youth Internet users said individuals asked them for nude or sexually explicit photographs of themselves.¹

An increased proportion of youth Internet users are encountering unwanted exposures to sexual material. Most youth (86%) saw nude images of people while online and more than half (60%) saw more graphic images including those depicting sexual contact, sexual violence and deviant sexual behavior. Exposure to unwanted sexual material occurred despite increased use of filtering, blocking, and monitoring software in households of youth Internet users.²

Data collected from law enforcement agencies conducting computer facilitated child exploitation cases revealed that almost all individuals arrested for possessing child pornography were male. Most possessed pornographic images of prepubescent children (83%) and images graphically depicting the sexual penetration (80%) of a child. Fifty-eight percent (58%) of these children were under the age of 5. Approximately 1 in 5 arrested for possessing child pornography (21%) had images depicting sexual violence to children such as bondage, rape, and torture. In short, the images possessed by offenders investigated by law enforcement are those recording the most pernicious sexual assaults against young children.

Studies also indicate a correlation between possessing child pornography and sexually victimizing children. In one study, 40% of those arrested for possessing child pornography also sexually victimized children. Yet only eleven percent of those offenders had a prior arrest for a sexual offense committed against a minor,³ meaning that those investigated for possessing child pornography are often unknown to law enforcement. Investigations into child pornography are often law enforcement's only gateway into uncovering child victimization.

¹ Wolak, Mitchell, and Finkelhor. Online Victimization of Youth: Five Years Later, 2006.

² Wolak, Mitchell, and Finkelhor. Online Victimization of Youth: Five Years Later, 2006.

³ Wolak, Finkelhor, Mitchell. Child-Pornography Possessors Arrested in Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study, 2005.

Dr. Andres Hernandez, PsyD., Director of the Sex Offender Treatment Program at a federal correctional institution, testified before a Congressional committee on September 26, 2006 regarding studies he has conducted on sex offenders in his treatment groups. In his first study examining the link between the possession of child pornography and child molestation, Hernandez concluded that 76% of offenders convicted of possessing child pornography had thought of or acted out sexually against children. In a secondary study using polygraph-aided interviews, Dr. Hernandez learned that 85% of 155 offenders admitted to committing "hands-on" sex offenses against children. During the study, those 155 child pornography offenders disclosed over 1,702 *victims* of hands-on child sexual offenses committed by them.

Victims of child sexual assault can experience both short-term and long-term effects. Short-term effects vary depending on circumstances surrounding the abuse and include regressive behavior, sleep disturbances, eating problems, behavior and performance problems at school and withdrawal from educational and social activities. The long term impact of sexual assault includes severe depression, anxiety disorders, alcoholism, drug abuse, insomnia, sexual promiscuity and sexual dysfunction. In addition, revictimization is a common occurrence with research showing that child victims of sexual assault are more likely to be a victim of rape or to be involved in abusive relationships as adults.⁴

III. History of the Wisconsin ICAC Program: Investigation and Education

The Internet Crimes Against Children Unit was created in 1998 and initially housed in the Department of Justice, Division of Criminal Investigation, as a subsection of the Technical Services Unit. From 1999 to 2001, all Division of Criminal Investigation agents were eligible to work undercover online enticement or "traveler" investigations on overtime. The program did not have full time investigative staff assigned.

In 2000, the first child pornography enterprise investigation "Operation Avalanche" was initiated. During Operation Avalanche, law enforcement officers seized the customer list of a website selling child pornography. That customer list generated 583 leads in Wisconsin. In 2001, a similar national enterprise investigation, entitled "Operation Site-Key," was conducted and generated 316 leads in Wisconsin. The National Center for Missing and Exploited Children's CyberTipline also became functional during this time-frame providing additional child sexual exploitation leads to the ICAC Unit. With a better understanding of how child sexual predators were consistently utilizing the Internet to exploit children, it became clear that full-time staff needed to be devoted to the ICAC Unit.

In 2000, the Division of Criminal Investigation used Federal grant funds to hire one new full-time special agent to exclusively work ICAC cases. At the same time, one Technical Service Unit special agent was trained in conducting computer forensic examinations, and one program assistant position was reallocated to a program and

⁴ American Psychological Association. Understanding Child Sexual Abuse; Education, Prevention and Recovery. www.apa.org/releases/sexabuse/effects.html.

planning analyst position serving the ICAC Unit. This grouping served as an effective model to build the ICAC unit.

As a part of State budget initiatives in 2002 and 2003, several resources were reallocated within the Department of Justice. The Division of Narcotics Enforcement merged with the Division of Criminal Investigation and the State Crime Lab combined computer forensic resources with the Division of Criminal Investigation. By 2004, this reallocation of resources tripled the full-time staffing in the Division of Criminal Investigation dedicated to investigating ICAC cases and the processing of digital evidence.

The impact of that resource allocation was immediately felt. As depicted below, cases opened increased by 475% (Figure 1). The investigation of these cases led to a 350% (Figure 2) increase in subpoenas issued and a 7350% increase in search warrants executed (Figure 3). Within one year, arrests increased by 290% and over a two-year period had increased by 1090% (Figure 4). Likewise, forensic examinations increased by 265% in the first year and over a two-year period the increase was 940% (Figure 5).

Figure 1

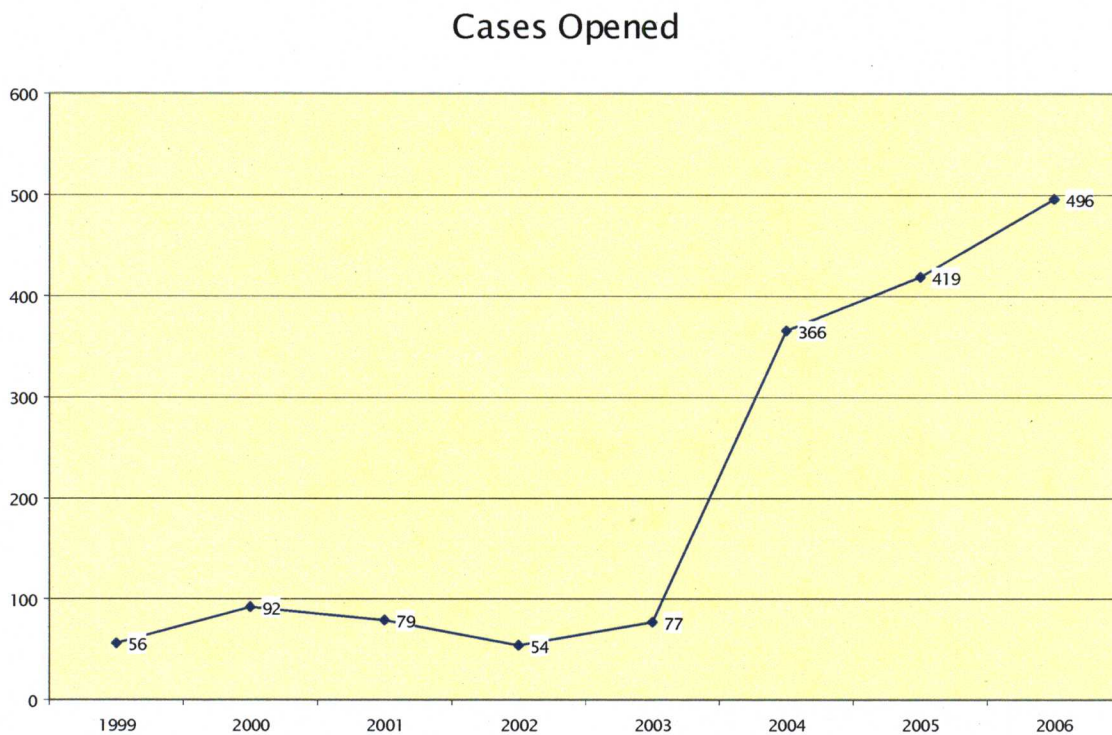


Figure 2

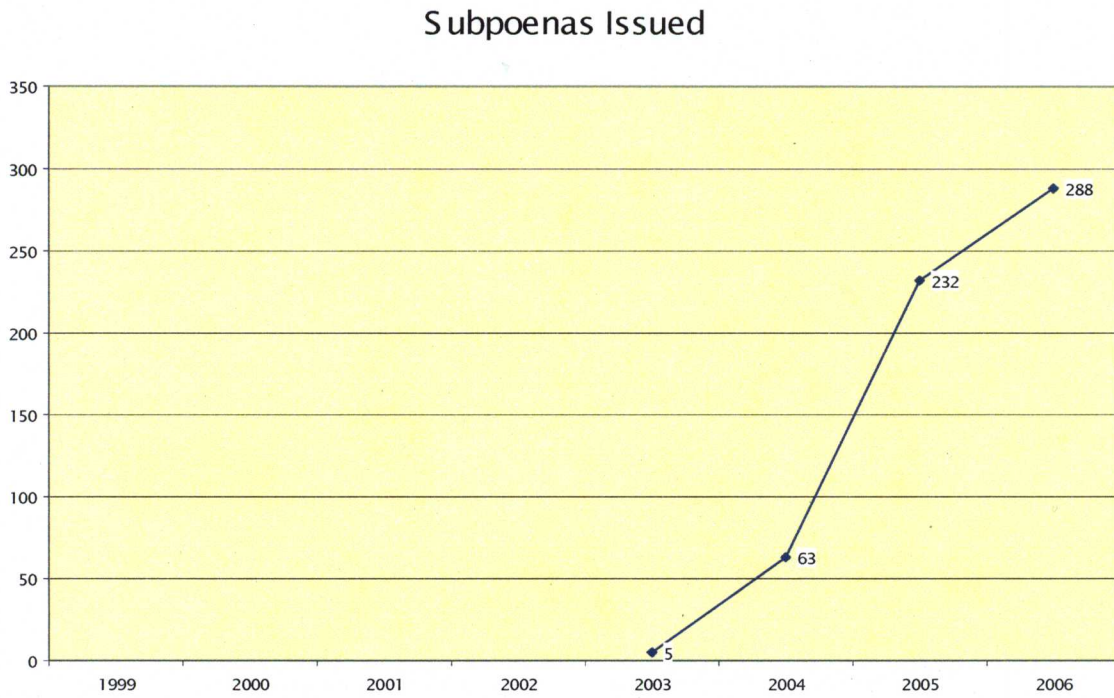


Figure 3

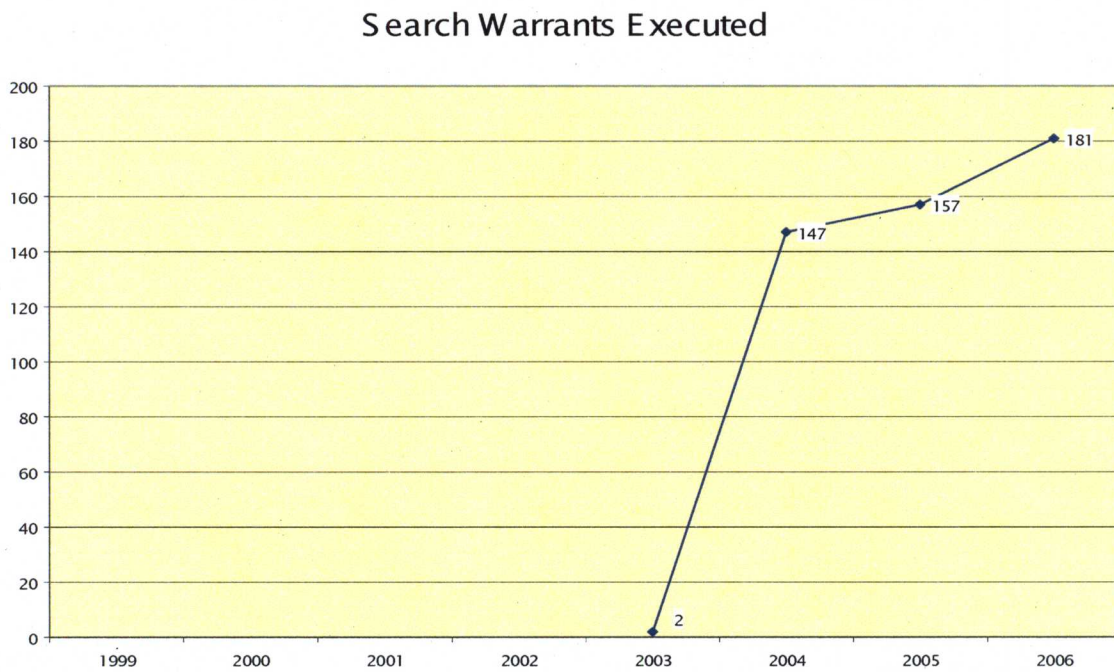


Figure 4

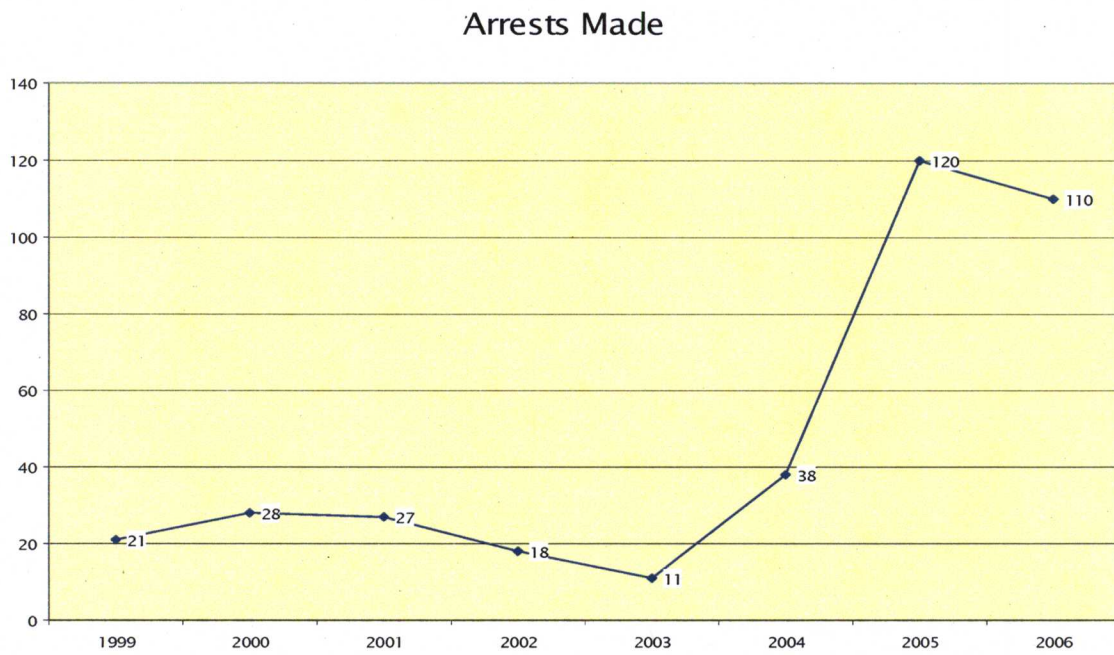
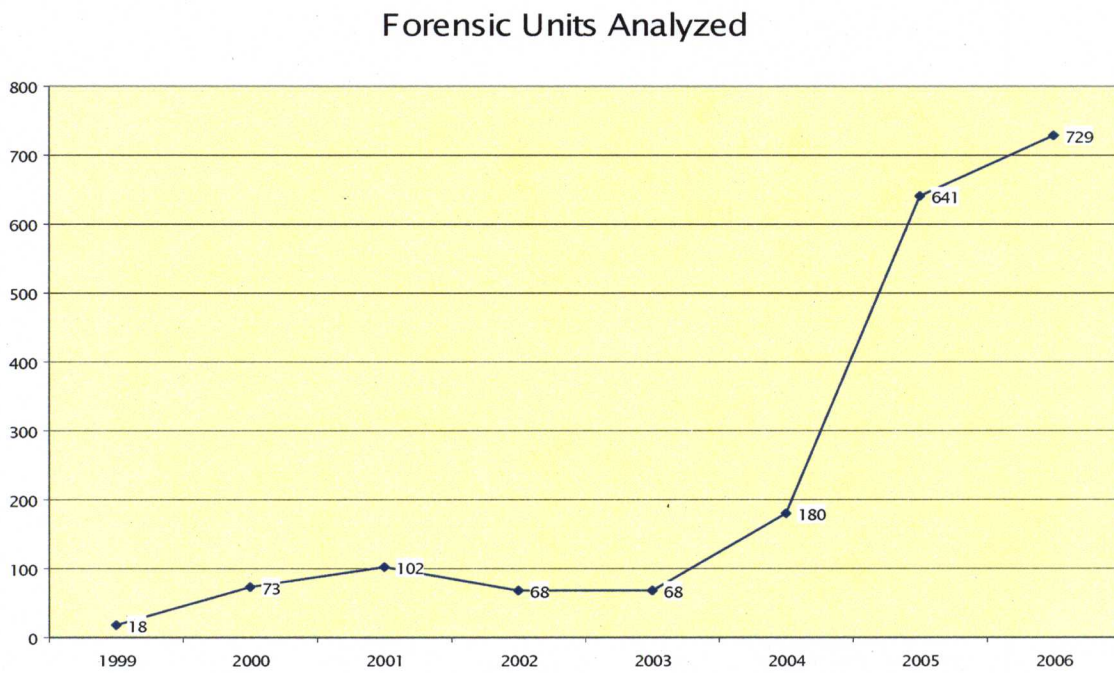
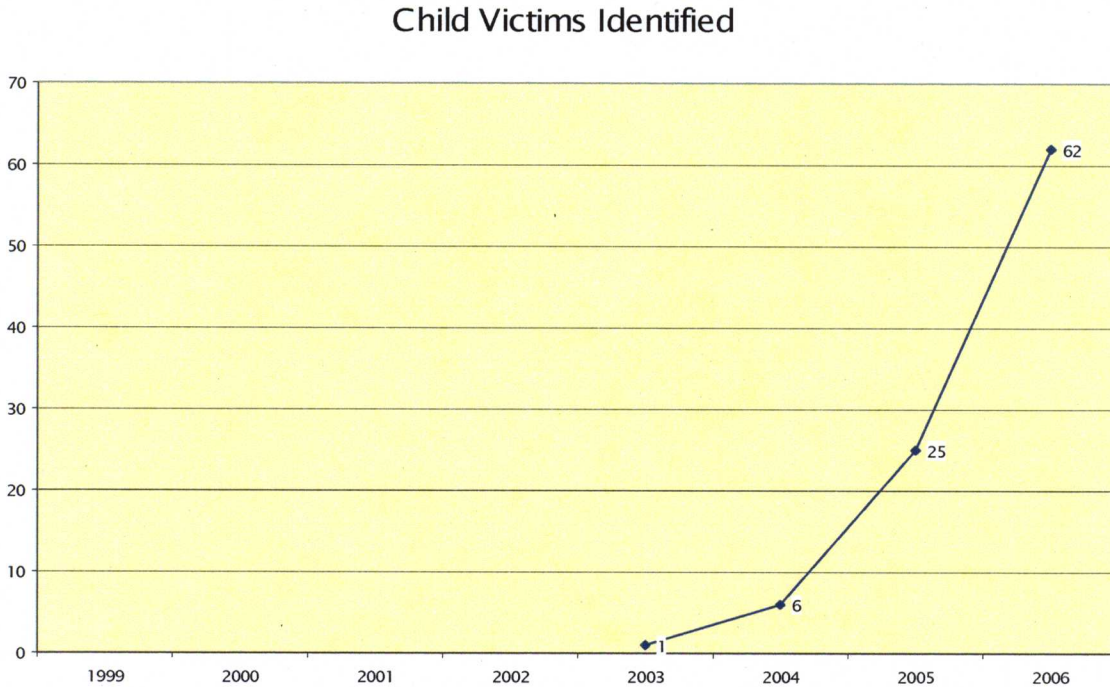


Figure 5



Over the past two years, a significant amount of time has been devoted to identifying victims of sexual assault. As a result of this focused effort, the number of child victims identified increased 1000% in two years (Figure 6).

Figure 6



Education is part of a comprehensive effort to combat online sex crime. In an effort to educate the public and prevent the victimization of children, the Department of Justice partnered with NetSmartz, the Internet safety division of the National Center for Missing and Exploited Children. Division of Criminal Investigation staff has trained local law enforcement, school officials, and community groups to use the NetSmartz program to educate children and parents regarding the risks youth face online and the actions that can be taken to avoid victimization. Last year, ICAC staff trained over 42,000 parents, educators, law enforcement, prosecutors, correctional officers, and other professionals in the tactics online predators use and helped them to develop skill sets to protect children and better detect sex offenders in the community.

In sum, the allocation of additional full-time resources had a significant positive impact on the Department of Justice's ability to conduct Internet facilitated child sexual exploitation investigations. The increased staffing ultimately resulted in an increase in the number of child victims identified and the number of child sex offenders brought to justice. Additional staffing devoted to this unit will lead to more investigations of known criminal activity, and increased identification of child victims, making Wisconsin a safer place for children.

IV. Current Case Makeup and Staffing

The ICAC unit is led by a Criminal Investigation Director who is responsible for ICAC strategic planning and supervision, coordinating investigative and outreach efforts, building partnerships, and grant management. One office associate is tasked with computer evidence intake for local law enforcement and digital evidence management for the ICAC Unit. A second office associate manages the Cybertip program including generating all legal process associated with cybertips. This office associate also provides Internet safety presentations to schools and community groups. There are three full-time computer forensic analysts and two special agents who devote half of their time conducting forensic examinations of digital media to secure digital evidence for successful prosecutions. There are three full-time special agents dedicated to investigating child sexual exploitation cases. In 2007, Attorney General Van Hollen appointed one Assistant Attorney General to provide the ICAC Task Force and local prosecutors with legal advice related to this area of expertise.

Department of Justice, Division of Criminal Investigation agents assigned to the ICAC Unit conduct proactive and reactive investigations. Cases are generated primarily from four sources: (1) peer-to-peer file sharing network investigations conducted by staff agents; (2) investigations of cybertips received from citizens and Internet Service Providers through the National Center for Missing and Exploited Children; (3) undercover Internet "sting" operations conducted by agents; and (4) referrals from ICAC affiliated and non-affiliated law enforcement agencies. In 2006, approximately 70% of the Wisconsin ICAC Task Force's cases were possession or distribution of child pornography cases; 20% were online enticement cases; and 10% involved online exposure of sexually explicit images or narratives.

1. Peer-to-Peer Investigations

A majority of the possession and distribution cases in 2006 that led to arrest were peer-to-peer investigations. Peer-to-peer clients allow users to connect with each other directly without a central point of management to share files. Division of Criminal Investigation agents are using cutting edge technology to conduct undercover peer-to-peer file sharing investigations of images and files being offered for distribution in the public domain. Through these investigative efforts, those who traffic child pornography on the Internet in Wisconsin through free file sharing programs are being identified, arrested, and prosecuted. Since the inception of this initiative in March 2006, 15,445 unique IP addresses resolving back to Wisconsin have been identified as offering to share known images of child pornography on 55,686 different occasions. This past year, 55 peer-to-peer cases were initiated resulting in the arrest of law enforcement officers, daycare providers, educators, and others who have legitimate access to children. This initiative has identified offenders who are not only possessing or distributing child pornography, but also victimizing children. For example, peer-to-peer investigations led to the arrest of a Walworth County man who was initially identified to be sharing graphic images of child pornography through peer-to-peer file sharing and later discovered by investigators to be molesting two young girls in his community. Similarly, the Division of Criminal Investigation executed a search warrant at Jason DeAlmeida's residence in Dane County. Numerous files containing images and videos of children engaged in

sexually explicit conduct, some of which were downloaded only hours before the execution of the search warrant, were uncovered. DeAlmeida was employed at a local child care center and DeAlmeida was indicted federally for the possession of child pornography.

2. Cybertips

The Division of Criminal Investigation acts as a clearinghouse for the National Center for Missing and Exploited Children's CyberTipline. The Congressionally mandated CyberTipline is a reporting mechanism for cases of child sexual exploitation including child pornography, online enticement of children for sex acts, molestation of children outside the family, sex tourism of children, child victims of prostitution, and unsolicited obscene material sent to a child. It functions as the 9-1-1 on the Internet. Reports may be made 24-hours per day, 7 days per week online. This past year, the Division of Criminal Investigation received and evaluated 349 Wisconsin connected cybertips generated by complaints filed by citizens and Internet Service Providers. One such tip lead to the identification and arrest of a former Wisconsin resident now living in Georgia who was broadcasting the sexual assault of a toddler live via web camera to individuals in a chat room. Recently, a cybertip led to the identification and arrest of Michael Foret, a University of Wisconsin - Stevens Point professor who is believed to have posted images of child pornography to a website dedicated to hosting personal photo albums.

3. Online Child Enticement Investigations

The Division of Criminal Investigation actively conducts online child exploitation investigations in chat rooms and other web-based communication sites. In this type of investigation, special agents use undercover identities to identify adults who want to meet children for the purpose of engaging in sexual activity or adults who are willing to make their children available for adult sexual contact. This type of investigation used to make up 100% of the ICAC unit's case load. Today it makes up 20% of the ICAC unit's investigative efforts. One example of the success of this type of investigation includes John Ohlinger who was sentenced to life in state prison plus 40 years for his conviction in a Division of Criminal Investigation traveler investigation. The Eau Claire resident drove a semi-trailer from Ohio to Racine, where he believed he was meeting a mother and her 13-year old child, to drive them both to New Orleans, Louisiana, for sex. Ohlinger had previously been sentenced to 30 years in Federal prison for sending child pornography to the undercover Division of Criminal Investigation agent in this investigation. Ohlinger was twice convicted in California for child molestation, including the assault of an eight year old developmentally disabled child. He spent two prison terms in California before he moved to Wisconsin.

4. Assisting Law Enforcement Partners

The Division of Criminal Investigation also coordinates the State's response to national ICAC or federal law enforcement child exploitation initiatives. Under this initiative, leads are secured when law enforcement seizes databases containing customer information from web based companies selling images of child pornography. In the past

two years, the Division of Criminal Investigation followed up on over 50 such leads. One such case led to the identification of a Greg Blum who is facing charges after images of child pornography were discovered on his computer hard drive and home movies documenting his sexual assaults of a child were discovered. The Division of Criminal Investigation also arrested Kenneth McDonald of Mukwonago for possession of child pornography. He first became a suspect when his name appeared on a customer list of a child pornography website. Following the execution of the warrant, agents learned that McDonald had befriended two adult couples who had small children. Further investigation revealed that McDonald molested two girls in their homes where he was babysitting. He was sentenced to a six year prison term.

Cases are also initiated when agents provide assistance to local law enforcement agencies and district attorneys' offices that lack the resources, staffing or expertise to investigate internet based or other types of child sexual exploitation cases. For example, the Division of Criminal Investigation assisted the Milwaukee County District Attorney's office in investigating a man suspected of molesting two prepubescent boys after he gained access to them through marriage. The individual had access to and used computers at home and the public library. This investigation led to sexual assault disclosures by one of the boys. This man was sentenced to 10 years in prison.

Finally, as part of the ICAC Task Force, the Division of Criminal Investigation assists other ICAC Task Forces in their investigations when victims or offenders are identified in Wisconsin. For example, the Division of Criminal Investigation assisted the Washington ICAC Task Force in investigating Jody Lowe, an Eau Claire man who was manufacturing sexualized undergarments for young boys and selling them online. The Division of Criminal Investigation confirmed the business was accepting images of child pornography in exchange for product shipment. Lowe also distributed child pornography to his customers. This investigation in Wisconsin generated leads that were distributed to other ICAC Task Forces and law enforcement in Australia for further investigation. Lowe was sentenced to 12 years in prison.

V. The Role of Forensics

All digital investigations, especially Internet facilitated child sex crimes, rely on forensic analysis to secure evidence needed to obtain a conviction in a court of law. Each analysis entails the creation of a duplicate image of the evidence onto a server, examining all files and restoring information pertinent to the investigation. Digital evidence can be found on hard drives, cell phones, gaming devices, and other external media. Forensic analysis is one of the most effective ways to identify victims of child sexual assault. It has successfully led to the identification of those creating and distributing child pornography.

Forensic analysts support Division of Criminal Investigation agents assigned to the ICAC Unit. For example, in March of 2007, a Division of Criminal Investigation analyst forensically examined digital media seized during the execution of a search warrant related to a peer-to-peer investigation in Waukesha County. The forensic analyst uncovered evidence suggesting that a camera used to take family photos may also have

been used to create an image of an adult male digitally penetrating a child. Based on this information, an additional search warrant was executed at the residence and the suspected camera, bedding, and other items depicted in that image were seized. The suspect in this case is awaiting trial for sexually assaulting a child and manufacturing child pornography.

Division of Criminal Investigation forensic analysts also support child exploitation investigations conducted at the local level. Division of Criminal Investigation analysts assisted the Manawa Police Department in analyzing the computer of a man suspected of possessing large amounts of child pornography. Based on initial forensic findings, a second computer was seized and further analysis was conducted. The forensic analysis revealed multiple child sexual assault victims. This man was charged and sentenced to 40 years in prison. Similarly, analysts assisted the Janesville Police Department by forensically analyzing digital evidence in the Jeremy Schade case. The work performed by the forensic analyst assisted the Janesville Police Department in identifying 10 child sexual assault victims located in two states. Schade was sentenced to 220 years in prison without parole for manufacturing child pornography.

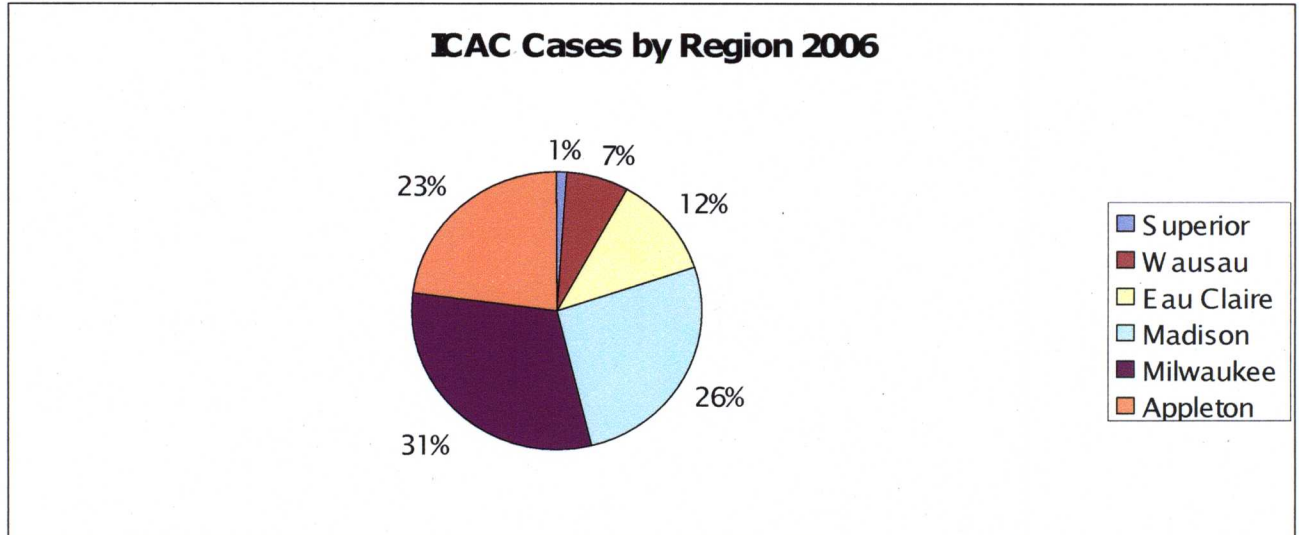
A direct relationship exists between ICAC investigative and computer forensic staffing levels. Approximately 78% of cases submitted to the Division of Criminal Investigation for computer forensic analysis are related to computer facilitated child sex crimes. Nearly half of those cases are submitted by ICAC agents. Though child sexual exploitation cases are prioritized and more often have less wait time, the current median wait time for a completed computer forensic examination is five months. That said, it is anticipated that the median wait time for a forensic exam will increase by 1.5 weeks per month for every one agent added without adding equivalent forensic staffing. This will create a backlog that will result in delayed investigations and prosecutions for all child exploitation and other cases also requiring forensic examinations. More importantly, this backlog will result in the delayed identification of child victims of sexual assault as illustrated above.

VI. The Need for Additional Resources

Unfortunately, there is no shortage of case work in the area of Internet Crimes Against Children. As illustrated by Figure 1, documented ICAC complaints and cases opened continue to increase. As practical use of the Internet increases, so will its use to facilitate the commission of crime, including child sexual exploitation. With 15,445 Wisconsin IP addresses throughout the state offering to share known images of child pornography, there are literally thousands of new peer-to-peer file sharing cases that could be initiated out of every Division of Criminal Investigation field office. This is only one investigative technique of many used by special agents to identify and apprehend child sex offenders. This is clear evidence that additional resources need to be devoted to combating the problem of online child exploitation. The scope of the criminal behavior illustrated far exceeds the current resources devoted to enforcing the law.

Over the past two years, ICAC cases have been initiated by the Division of Criminal Investigation in every region of the State (Figure 7). These case assignments reflect what is also illustrated by the map above; this is a statewide problem requiring the devotion of state resources.

Figure 7



The Department of Justice recognizes that local law enforcement officers and prosecutors need to be trained to effectively investigate and prosecute these cases. Over the past two years, the Department has allocated discretionary funding to twenty-four local agencies in an effort to build investigative capacity (Appendix B). Our local ICAC partners are disbursed throughout the State and this effort has strengthened our ability to combat this statewide problem. It is important that investigative and forensic resources continue to be cultivated at the local level and that funding be provided to assist local agencies in doing so.

However, there are law enforcement agencies in the State that are unable to allocate investigative resources to the problem of Internet facilitated child sex crimes. The rapid evolution of technology and the cost of training and equipment needed to keep pace with the new technology prohibit most local agencies from devoting resources to this area. Law enforcement officials agree that the exploitation of our children is an egregious offense. It is the intent of the Department of Justice to have investigative resources available in every area of the State to immediately assist these law enforcement officials when requested.

Most Internet Service Providers only maintain valuable investigative records for 30-60 days. This business policy mandates that agents give immediate attention to complaints. A lack of full time staffing has created an environment in which on-going investigations and open complaints wait in queue for follow up as legal process is generated for service on Internet Service Providers. Failure to prioritize each new complaint means offenders are not identified and possible child victims are not rescued due to the unavailability of business records.

The ICAC Task Force received 496 documented child sexual exploitation complaints last year. These complaints were reported by parents, victims, Internet Service providers, law enforcement, prosecutors, or other citizens. Three hundred and forty nine (349) of these cases were investigated by Division of Criminal Investigation staff. An additional 15,445 unique IP addresses offering to share images of child pornography in Wisconsin have been documented, but because of staffing levels, only a comparative handful of these cases have been investigated. Some complaints not investigated by the Division of Criminal Investigation were referred to local law enforcement while others were filed due to a lack of investigative leads or records retention issues.

Each agent assigned to the ICAC unit is expected to initiate approximately 3 new investigations per month, including approximately 10 peer-to-peer cases per year. ICAC agents currently have a case clearance rate of 88%. Based on past case assignments, workload, and other relevant data, it is recommended that funding be allotted for additional investigative staff including one agent in Wausau, one agent in Eau Claire, two agents in Appleton, one agent in Madison, and one agent in Milwaukee. Three new regions in the State would gain coverage eliminating travel and overtime cost and decreasing response time. Six forensic analysts would offer support out of the Madison area.

	Average yearly caseload	Full-time agents assigned	Minimum agents requested	New staffing level	Anticipated investigations worked	Anticipated arrests	Forensic analysts requested
Superior	3	0	0	0			
Wausau	21	0	1	1	36	32	
Eau Claire	38	0	1	1	36	32	
Madison	78	1	1	2	72	63	6
Milwaukee	96	2	1	3	108	95	
Appleton	69	0	2	2	72	63	

Each special agent would be assigned a caseload of approximately 36 new investigations per year. Case types would include possession, distribution and manufacturing of child pornography; enticement; sexual assault; exposing a child to harmful materials; and juvenile prostitution. All cases may require the use of a variety of investigative techniques including undercover contacts, obtaining information through subpoenas, executing search warrants, interviewing suspects, identifying victims, assisting in the prosecution of offenders, and securing services for victims. After six (6) months of training, each agent should make prosecutable cases against approximately 32 offenders per year. Arrests are predicated on the availability of forensic resources and are calculated using the units average 88% clearance rate. Adding six new agents clears the cases waiting in queue enabling agents to immediately respond to complaints and process legal service to Internet Service Providers in a manner consistent with their retention policies. The six new agents also allow for a stronger effort to be made in

following up on the overwhelming number of peer-to-peer cases needing investigative attention. Even with an additional six agents, there will be a tremendous number of cases that can not be investigated.

Each computer facilitated child sexual exploitation case presented requires the work of a computer forensic analyst to secure evidence. Each new computer forensic analyst will be responsible for conducting on-site forensic previews of evidence and following up with more thorough lab analysis. Each analysis entails the creation of a duplicate image of the evidence onto a server, examining all files, and restoring information pertinent to the investigation. This process is lengthy, often due to the large volume of data presented with each investigation.

One program and planning analyst is requested to assist in the management and follow up of cybertips. In 2006, 349 cybertips were downloaded from the National Center for Missing and Exploited Children. Since most Internet Service Providers only maintain records for a short period of time, a swift response is critical. This position will be required to write legal process on tips received, create charts and other analytical products to demonstrate relationships or events, and provide Internet safety training to students and community members.

One Special Agent in Charge is needed to assist in the supervision of agents and forensic analysts assigned to the forensics division of the ICAC unit. The position will be required to manage the unit's IT needs and implement technical solutions for securing evidence in a forensically sound manner. The Bureau Director will continue to supervise investigative and support staff.

This budget request will allow for advancement to be made in investigating the 15,445 unique IP addresses resolving back to Wisconsin which have been identified as offering to share known images of child pornography on 55,686 different occasions. That said, it is estimated it would take 450 agents and 450 forensic analysts one year to act on each of these known peer-to-peer complaints.

VII. Resource Expansion Alternatives - Annual Costs

A. Governor's Budget Proposal (February 13, 2007)

	<u>Number</u>	<u>Salary</u>	<u>Benefits</u>	<u>1-time Supplies</u>	<u>Ongoing Supplies</u>	<u>Total</u>
Special Agent	3.00	\$139,300	\$65,764	\$0	\$145,000	\$350,064
Total	3.00	\$139,300	\$65,764	\$0	\$145,000	\$350,064

The Governor's proposed budget requested funding for three new special agent positions and limited funding to hire retired law enforcement officers. This option would create a larger forensic backlog and the use of non-sworn personnel could jeopardize Federal funding. Agent deployment throughout the State is limited.

A1. Figures provided by DOA

A2. Funding for retired officers budgeted by DOA in supplies line

A3. Figures shown are 2nd year; 1st year salaries and benefits budgeted for 9 months, with more budgeted in supplies

A4. Should be rounded to \$350,000 per year

B. Revising the Governor's Budget Proposal to Most Efficiently Deploy Resources with 3 Special Agents and 3 Forensic Analysts

	<u>Number</u>	<u>Salary</u>	<u>Benefits</u>	<u>1-time Supplies</u>	<u>Ongoing Supplies</u>	<u>Total</u>
Special Agent	3.00	\$142,409	\$67,231	\$0	\$0	\$209,641
Forensic Analyst	<u>3.00</u>	<u>100,358</u>	<u>42,261</u>	<u>0</u>	<u>0</u>	<u>142,619</u>
Total	6.00	\$242,767	\$109,492	\$0	\$0	\$352,259

Option B. revises the Governor's proposed budget to allow for the hiring of forensic analysts which prevent growth in the computer forensic backlog. Agent deployment is still limited. Travel and overtime costs will still exist and on-scene response time will be delayed. Moreover, existing resources will have to be diverted from other investigative services to cover supply costs.

B1. Figures shown are 2nd year; 1st year salaries and benefits budgeted for 9 months, with more budgeted in supplies

B2. Should be rounded to \$350,000 per year

C. Full Cost of 3 Special Agents and 3 Analysts

	<u>Number</u>	<u>Salary</u>	<u>Benefits</u>	<u>1-time Supplies</u>	<u>Ongoing Supplies</u>	<u>Total</u>
Special Agent	3.00	\$142,409	\$67,231	\$34,800	\$77,100	\$321,541
Forensic Analyst	<u>3.00</u>	<u>100,358</u>	<u>42,261</u>	<u>45,000</u>	<u>42,000</u>	<u>229,619</u>
Total	6.00	\$242,767	\$109,492	\$79,800	\$119,100	\$551,159

This full cost budget option expands on budget option A, revises the Governor's proposed budget as demonstrated in option B and calculates the true on-going supply line costs. This option limits statewide coverage.

D. Preferred Alternative with Optimal Staffing to Address Complaints

	<u>Number</u>	<u>Salary</u>	<u>Benefits</u>	<u>1-time Supplies</u>	<u>Ongoing Supplies</u>	<u>Total</u>
Special Agent in Charge	1.00	\$77,002	\$36,352	\$11,600	\$25,700	\$150,654
Special Agent	6.00	284,819	134,463	69,600	154,200	643,081
Forensic Analyst	6.00	200,716	84,521	90,000	84,000	459,237
Program & Planning Analyst	<u>1.00</u>	<u>33,453</u>	<u>14,087</u>	<u>8,300</u>	<u>8,000</u>	<u>63,840</u>
Total	14.00	\$595,989	\$269,424	\$179,500	\$271,900	\$1,316,812

The addition of 14 new employees allows for placement of agents in Wausau, Appleton, and Eau Claire to better serve central and northern Wisconsin. This option also provides for a small expansion of resources in Milwaukee and Madison based on documented complaints received and the resolution of peer-to-peer IP addresses. This

option lowers the Division's travel and overtime costs and allows for a more timely on-scene response. It also enables the investigation of over 100 additional cases a year compared with options B & C. A biennial budget request is attached as Appendix C.

E. Investigate all known IP addresses in 1 year

	<u>Number</u>	<u>Salary</u>	<u>Benefits</u>	<u>1-time Supplies</u>	<u>Ongoing Supplies</u>	<u>Total</u>
Special Agent in Charge	1.00	\$77,002	\$36,352	\$11,600	\$25,700	\$150,654
Special Agent	450.00	21,361,392	10,084,713	5,220,000	11,565,000	48,231,105
Forensic Analyst	450.00	15,053,688	6,339,108	6,750,000	6,300,000	34,442,796
Program & Planning Analyst	1.00	33,453	14,087	8,300	8,000	63,840
Total	902.00	\$36,525,534	\$16,474,261	\$11,989,900	\$17,898,700	\$82,888,395

It is estimated it will take 450 agents and 450 analysts one year to investigate all documented complaints including all known IP addresses offering to share child pornography in Wisconsin.

General Budget Notes

1. Forensic Analyst filled at PPA-Sr level
2. Salaries per April, 2007 compensation schedule; benefits per DOA-assigned rates
3. Supplies per assumptions made in preparing 9/15/06 DOJ budget

VIII. Conclusion

The Department of Justice has long been committed to investigating Internet facilitated child sex crimes. This commitment, however, is limited by a lack of resources that leaves an unacceptable amount of child victimization and other Internet facilitated criminal activity unaddressed. Furthermore, evidence suggests that this is not a fleeting problem. The Internet Crimes Against Children Task Force was established by the Department of Justice using Federal funding. Federal funding is no longer adequate to address the statewide problem of child sexual exploitation.

The State has allocated funding and resources to manage and monitor its 19,361 registered sex offenders. It is notable that over eighty seven (87) percent of those arrested by the Wisconsin ICAC Task Force are first time sex offenders that are not being monitored. At this time, DOJ has been able to identify 15,445 Internet addresses where individuals in Wisconsin are sharing child pornography. While these individuals have been identified, they have not yet been apprehended and arguably constitute an even greater threat to the State's most vulnerable citizens - our children. It is imperative that the legislature commit the resources necessary to protect them against these offenders.

The Department of Justice recognizes that all child sexual exploitation cases deserve prompt attention. The most innocuous complaint can lead to the apprehension of the most egregious offender. Consequently, we are seeking the creation of 14 new positions to work in the ICAC Unit. These new positions will allow the Department of Justice to react to complaints and requests for assistance as they are received. The deployment of resources throughout the State will provide for better responsiveness to

underserved parts of the State. It will also enable the Department of Justice to educate, train, and assist local law enforcement in the investigation and prosecution of child sex predators, thereby significantly increasing the resources that can be brought to bear against these offenders.

APPENDIX A

Review of Wisconsin Statutes Relating to Sexual Exploitation of Children

The Wisconsin Criminal Code contains many provisions applicable to the online sexual exploitation of children. These statutory provisions are located in Chapter 948 of the Wisconsin Statutes, entitled “Crimes Against Children.”

Child Pornography Offenses

Wis. Stat. § 948.12(1m) – Possession of Child Pornography

Wisconsin Statutes § 948.12(1m) prohibits the knowing possession of any image of a “child engaged in sexually explicit conduct” in essentially any format. Before one may be convicted of possession, the state must prove:

- (1) that the person knew they possessed the material;
- (2) that the person knew the character and content of the sexually explicit conduct depicted in the material; *and*
- (3) that the person knew or reasonably should have known that the child depicted in the image is under the age of 18 years. The statute is clearly intended to extend to the possession of digital images of children engaged in sexually explicit conduct. *See* Wis. Stat. § 948.01(3r).

Courts have sometimes struggled to define the meaning of the term “possession” in the digital image context or to apply the existing concepts of possession and constructive possession to that context. The developing law in this area (or the need for clarification of it) is beyond the scope of this document.

“Sexually explicit conduct” is defined in Wis. Stat. § 948.01(7) as meaning “actual or simulated” conduct of the following types:

- (a) Sexual intercourse (defined in detail in the statute);
- (b) Bestiality;
- (c) Masturbation;
- (d) Sexual sadism or sexual masochistic abuse, including, but not limited to, flagellation torture or bondage; or
- (e) Lewd exhibition of intimate parts.

The definitions of “sexually explicit conduct” in (a) – (d) are generally easy to apply to particular images. The meaning of “lewd exhibition of intimate parts” may be open to interpretation in particular instances.

The term “intimate parts” is defined in Wis. Stat. § 939.22(19) to include the breast, buttocks, anus, groin, scrotum, penis, vagina or pubic mound of a human being. This language makes clear that the image must depict an actual human being and not a cartoon figure or a “virtual” person.

The term “lewd” is not defined by Wisconsin Statutes. Court decisions provide guidance on the meaning of that term. Images depicting “mere nudity” are not “lewd.” In order to qualify as “lewd” images, the image must include the display of an intimate part in a “sexually suggestive” manner or in a manner designed to “incite to sensual desire or imagination.” *State v. Petrone*, 161 Wis.2d 530, 561, 468 N.W.2d 676 (1991); *State v. Lubotsky*, 148 Wis. 2d 435, 438-39, 434 N.W.2d 859 (Ct. App. 1988). The requirement that there be proof of more than “mere nudity” is designed to protect against the inclusion of nonsexual images of children (e.g., baby bath pictures) within the reach of the statute.

It appears that if a suspect image is to fall under sub. (e) of Wis. Stat. § 948.01 (7) (lewd exhibition of intimate parts) the intimate part must be *actually exposed or displayed to view*, rather than only being discernable through clothing or some other covering. *Petrone*, 161 Wis. 2d at 561. This requirement marks the distinction between “child pornography” and “child erotica” or, perhaps, “art” protected by the First Amendment. “Child erotica” often consists of sexually suggestive images of clothed or partially clothed children or images of nude children with intimate parts obscured from direct view in some fashion. The Internet is awash in images of young children dressed and/or posed in sexually suggestive ways at web sites advertising “preteen super models” or “lolitas” or “child super models”. These images are beyond the reach of the statute.

Possession of child pornography in violation of Wis. Stat. § 948.12(1m) is a Class D felony and is punishable by a maximum fine of \$100,000 and total imprisonment of up to twenty-five (25) years. The maximum term of confinement time is fifteen (15) years and the maximum term of extended supervision is ten (10) years. Wis. Stat. § 973.01(2). Wisconsin Stat. § 939.617(1) provides that the minimum term of confinement time for a violation of § 948.12 is three (3) years. However that “minimum” sentence is a presumptive minimum and the court may deviate from it (including placing the offender on probation) if the court finds that the best interests of the community will be served and the public will not be harmed by doing so. In any event, the presumptive minimum term applies only if the defender was over the age of 18 when the violation occurred. *See* Wis. Stat. §§ 939.617(2) and (3).

Wis. Stat. § 948.12(2m) – Exhibiting or Playing a Recording of Child Pornography

Wisconsin Stat. § 948.12(2m) prohibits the exhibition or playing of any recording of a child engaged in sexually explicit conduct if: (1) the person playing or exhibiting the recording knows that he has exhibited or played it; (2) the person knew the character and content of the sexually explicit conduct depicted in the recording before the person exhibits or plays the recording; and (3) the person knew or reasonably should have

known that the child engaged in sexually explicit conduct depicted in the recording has not attained the age of 18 years before the person exhibited or played the recording.

The term “exhibit” is defined in Wis. Stat. § 948.01(1d) to include converting a recording that is not viewable in its original recorded form into a form in which it may be viewed. This would include converting digital data stored on a computer into an image that could be viewed. Beyond that specific definition, the terms “exhibit” and “play” appear to be given their ordinary meanings. There are no reported appellate decisions in Wisconsin addressing Wis. Stat. § 948.12(2m). Violations of that statute (if committed by a person over age 18) are also Class D felonies punishable to the same extent as violations of § 948.12(1m).

Wis. Stat. § 948.05(1) and (1m) – Sexual Exploitation of a Child

Wisconsin Statute § 948.05(1) prohibits:

- (a) Causing a child to engage in sexually explicit conduct with knowledge of the character and content of that conduct and for the purpose of recording or displaying in anyway that sexually explicit performance; or
- (b) Recording or displaying in any way a child engaged in sexually explicit conduct with knowledge of the character and content of that conduct.

Section 948.05(1) overlaps with § 948.12(2m) in part, subjecting those who display or exhibit a recording of a child engaged in sexually explicit conduct to prosecution under one or both sections. However, § 948.05(1) is more broad than § 948.12(2m) because § 948.05(1)(b) can be violated by one who causes a child to perform a sexually explicit act live in the presence of others. The primary distinction though is that § 948.05(1) covers *the production* of recordings of children engaged in sexually explicit conduct rather than the possession or exhibition of the same.

Section 948.05(1m) is an even more encompassing provision. It provides that anyone that does all of the following may be convicted of a crime:

- (1) produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes or possesses with the into sell or distribute any recording of a child engaged in sexually explicit conduct;
- (2) if the person knows the character and content of the sexually explicit conduct involving the child; and
- (3) if the person knows or reasonably should know that the child engaging in the sexually explicit conduct is under the age of 18 years.

The scope of this statute includes both the commercial or “for profit” purposes as well as producing, performing in or importing into the states such recording for purely personal use or non commercial purposes. *State v. Bruckner*, 151 Wis. 2d 833, 845-51, 447 N.W.2d 376 (Ct. App. 1989). This means that someone who “imports into the state” a recording of child pornography (including digital child pornography) from outside the

state and possesses it for his personal use could be charged with violating both §§ 948.05(1m) and 948.12(1m). In the digital context it can be difficult to prove with precision *where* an image or recording is imported from when it is downloaded from, or viewed over, the Internet.

Section 948.05(2) makes it a crime for a person responsible for a child's welfare to knowingly permit, allow or encourage the child to engage in sexually explicit conduct for any of the purposes proscribed by §§ 948.05(1) and (1m). Section 948.01(3) defines who qualifies as a "person responsible for a child's welfare" and includes a parent, step-parent, guardian, legal custodian, foster parent or staff member of a public or private residential institution or agency, among others.

Violations of §§ 948.05(1), (1m) and (2) are all Class C felonies punishable by a maximum fine of \$100,000 and forty (40) years of total imprisonment, including a maximum confinement period of twenty-five (25) years and a maximum extended supervision period of fifteen (15) years, if the offenses are committed by a person who is at least 18 years old. Under § 939.617(1), the presumptive minimum confinement period for those violations is five (5) years if the offender is at least 18 years old at the time of the violation. Again, the court has the authority to deviate from the presumptive minimum confinement period, including by ordering probation, if the court determines that the best interests of the community will be served and the public will not be harmed by doing so.

Additional Statutes With Potential Application in Cases Involving the Production of Child Pornography

Wis. Stat. § 948.07 is entitled "Child Enticement" and it covers multiple methodologies for sexually abusing a child. The most directly applicable sub-section is § 948.07(4), which provides that anyone who causes or attempts to cause any child under the age of 18 years to go into any vehicle, building, room or other secluded place with the intent to (or for the purpose of) recording the child engaging in sexually explicit conduct is guilty of a Class D felony. That offense is punishable by a fine of not more than \$100,000 or total imprisonment of not more than twenty-five (25) years, including fifteen (15) years of initial confinement and ten (10) years of extended supervision. There is no mandatory or presumptive minimum penalty for that offense. A person engaging in that behavior may be prosecuted under both § 948.07(4) and § 948.05(1)(a), whether or not the recording actually takes place. *State v. DeRango*, 2000 WI 89, 236 Wis. 2d 721, 613 N.W.2d 833.

Of course, if a person who produces recordings of children engaged in sexually explicit conduct does so by himself committing or directing or encouraging others to commit "hands on" sexual assaults of children, that person could be prosecuted for the Sexual Assault of a Child under § 948.02 or Engaging in Repeated Acts of Sexual Assault of the Same Child under § 948.025, either as the direct actor or as a party to those crimes. Depending on the circumstances on the specific sexual assaults and the ages of

the children assaulted, those offense could range in severity from Class A felonies to Class C felonies.

Online "Luring" or Sexual Exploitation

Online luring of children by sexual predators or deviants through Internet chat rooms or other web based communication methods is regularly highlighted in the popular media. Criminal cases based on this conduct can result from undercover "sting" investigations where no real child is involved or from reports of online solicitations of real children discovered in process or after the culmination of an actual sexual assault of a child. This conduct can include sexually graphic "chats" over the Internet between an offender and a real child or an undercover investigator posing as a child, use of web cams by which the offender displays himself/herself engaged in sexually explicit conduct (usually masturbatory conduct), soliciting and causing a real child to display himself/herself to the offender via the child's web cam, exchange of sexually explicit photographs, and/or invitations to meet for a sexual purpose and an actual effort to accomplish the sexual purpose.

The current Wisconsin criminal code contains several provisions that directly apply to the types of conduct described above. Those include: Wis. Stat. § 948.075 (Use of a computer to facilitate a child sex crime); Wis. Stat. § 948.07 (Child enticement, discussed above); Wis. Stat. § 948.055 (Causing a child to view or listen to sexual activity); and, Wis. Stat. § 948.11 (Exposing a child to harmful material or harmful descriptions or narrations).

Wis. Stat. § 948.075 – Use of a Computer to Facilitate a Child Sex Crime

Wis. Stat. § 948.075(1r) prohibits using a "computerized communication system" to: (1) communicate with any person the actor believes or has reason to believe is under age 16 years; (2) with the intent to have sexual contact or intercourse with that child. Section 948.075(3) requires that before a person may be convicted of that offense there must be proof that the actor did one or more acts designed to effectuate his/her intention to have sexual contact or intercourse with the child. This proof of an affirmative act evidencing that intent must be in addition to the act of communicating with the targeted child. This requirement of an independent act in furtherance of the intent to commit a sexual assault of a child is designed to assure that those persons captured by the statute are those who have gone beyond acting upon a "fantasy" by simply communicating with a presumed child. The "overt act" in furtherance of the intent is ordinarily established by the fact of the actor traveling to a designated meeting location, reserving a motel room or taking other steps to effectuate the purpose. Section 948.075 is also limited to only those actors who have reason to believe that the child with whom they are communicating is less than two years younger than the actor. For example, the statute does not criminalize the acts of a 17 year old communicating with a 15 ½ year old child.

Violations of § 948.075(1r) are Class C felonies, punishable by a fine of not more than \$100,000 and total imprisonment for not more than forty (40) years. The

confinement portion of any sentence for that offense may not exceed twenty-five (25) years and the extended supervision portion of that sentence may not exceed fifteen (15) years. Pursuant to § 939.617, the presumptive minimum confinement period for such a violation is five (5) years.

Wis. Stat. § 948.055 – Causing a Child to View or Listen to Sexual Activity

Section 948.055(1) provides that it is a crime for a person to: (1) intentionally cause a child (under the age of 18) to view or listen to “sexually explicit conduct” (2) for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

Violations of § 948.055(1) are Class F felonies if the child in question has not attained the age of 13 years and are Class H felonies if the child is between the ages of 13 years and 18 years. A Class F felony is punishable by a maximum fine of \$25,000 and maximum imprisonment of not more than twelve (12) years and six (6) months, with the maximum term of confinement at seven (7) years and six (6) months and the maximum term of extended supervision at five (5) years. The penalty for a Class H felony is a maximum fine of \$10,000 and a maximum period of imprisonment not to exceed six (6) years, with a maximum term of confinement of three (3) years and the maximum term of extended supervision of three (3) years. There are no mandatory or presumptive minimum sentences applicable to violations of § 948.055.

Section 948.055 might apply to circumstances where an individual communicated with a child (or an undercover investigator posing as a child) and shared sexually explicit photographs of himself/herself with the child or, by use of a “web cam,” displayed to the child via the Internet images of himself/herself or others engaged in sexually explicit conduct. It is not unusual for online sexual predators to exhibit themselves to their target victims through a web cam while they are engaging in sexually explicit conduct. That conduct usually takes the form of displaying their genitals to the target child and/or masturbating. That same conduct might also violate one or more subsections of 948.07, prohibiting child enticement.

Wis. Stat. § 948.11 – Exposing a Child to Harmful Material or Harmful Descriptions or Narrations

Section 948.11 is a lengthy and complicated statutory provision. A very brief summary of that statute is that it prohibits the knowing and intentional sale, distribution, exhibition or verbal communication by any means of “harmful material” or “harmful descriptions or narrative accounts” as defined by the statute. “Harmful descriptions or narrative accounts” means an explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children. “Harmful materials” are materials containing the same kinds of depictions or descriptions but in other than narrative form (e.g., pictures, drawings, sculptures, motion picture films, etc.). The determination of

whether materials are "harmful to children" involves the application of community obscenity standards.

Any person who actually exposes a child to such material, or attempts to do so, is guilty of a Class I felony if it is proven that the actor knew or reasonably should have known that the child exposed to the material was under the age of 18 or the actor had face to face contact with the child before or during the communication of the material to the child. Class I felonies are punishable by a maximum fine of \$10,000 and maximum imprisonment not to exceed three (3) years six (6) months. The maximum confinement period is eighteen (18) months and the maximum period of extended supervision is two (2) years. There is no mandatory or presumptive minimum sentence applicable to violations of § 948.11.

Possessing such materials "harmful to children" with the intent to sell, rent, exhibit, play, distribute or loan the material to a child is a class A misdemeanor, again if there's proof that the actor knew or reasonably should have known that the child in question was under the age of 18 years or the actor had face to face contact with the child to whom the actor intended to give the material. Class A misdemeanors are punishable by a fine not to exceed \$10,000 and imprisonment in a county jail not to exceed nine (9) months.

Section 948.11 may be violated by actors who are engaging in the online solicitation of children for sexual purposes, either through the content of the Internet "chats" by which they groom or lure their potential victims or by virtue of exposing actual children with whom these offenders might meet to recordings of adult or child pornography.

Appendix B

Internet Crimes Against Children Affiliate List

Altoona Police Department
Ashland County Sheriff's Office
Ashland Police Department
Buffalo County Sheriff's Department
Campbell Police Department
Cross Plains Police Department
Door County Sheriff's Department
Douglas County Sheriff's Office
Fond du Lac Police Department
Green Bay Police Department
Holmen Police Department
LaCrosse Police Department
Milwaukee Police Department
New London Police Department
Onalaska Police Department
Oshkosh Police Department
Sauk Prairie Police Department
Shawano County Sheriff's Department
Sturgeon Bay Police Department
Town of Shelby Police Department
Superior Police Department
Waukesha County Sheriff's Office
Wausau Police Department
West Salem Police Department

Appendix C

Biennial Budget Preferred Alternative

	<u>FY2008</u>	<u>FY2009</u>
Salaries	\$446,991	\$595,989
Benefits	202,068	269,424
1-time Supplies	179,500	0
Ongoing Supplies	<u>203,925</u>	<u>271,900</u>
Total	\$1,032,484	\$1,137,312

Positions:

SAC	1.00	1.00
Special Agents	6.00	6.00
Forensic Scientists	6.00	6.00
Forensic Analyst	1.00	1.00

Notes

1. Forensic Analyst filled at PPA-Sr level
2. Salaries per April, 2007 compensation schedule; benefits per DOA-assigned rates
3. Supplies per assumptions made in preparing 9/15/06 DOJ budget
4. Assume 9 months of funding in FY2008